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further wherein said antibody does not specifically bind to an antigenic molecule from

- (i) Epstein-Barr virus;
- (ii) human cytomegalovirus (CMV);
- (iii) Herpes Simplex virus (HSV);
- (iv) Varicella-Zoster virus (VZV); or
- (v) Herpes virus saimiri.

REMARKS

The Invention

The present invention relates to antibodies which specifically bind to an antigenic molecule from an isolated human herpes virus, wherein the antibodies do not specifically bind to an antigenic molecule from Epstein-Barr virus, human cytomegalovirus (CMV), Herpes Simplex virus (HSV), Varicella-Zoster virus (VZV), or Herpes virus saimiri; and methods of detecting such antibodies in a biological sample. The isolated human herpes virus has the morphology of a human herpes virus and a double-stranded DNA genome of about 170 Kb, In addition, genomic DNA from the human herpes virus comprises the nucleic acid sequence of molecular clone ZVH14 (ATCC Accession No. 40,247).

Status of the Claims

Applicants wish to thank Examiner Salimi for extending the courtesy of the telephonic interview held on May 15, 2003 with Applicants' representatives Kevin Bastian and Carol Fang. During this interview, amendments to clarify the claims were discussed. Applicants thank Examiner Salimi for his time.

Claims 1, 2, and 4-12 are pending. Applicants have amended claims 1 and 4. The amendments do not introduce new matter or raise new issues that would require further consideration and/or search. In particular, claims 1 and 4 have been amended to clarify the characteristics of the herpes virus to which the antibody specifically binds.

Support for these amendments is found in the specification at, *e.g.*, col. 14, lines 48-50. Thus, no new matter is added by these amendments.

In addition, a Second Supplemental Declaration under 37 C.F.R. 1.175(b)(1) asserting that errors in claiming less than they had a right to claim arose without any deceptive intention on the part of the inventors. A copy of a Second Supplemental Declaration under 37 C.F.R. 1.175(b)(1) asserting that errors in claiming less than they had a right to claim arose without any deceptive intention on the part of the inventors is enclosed with this amendment. Once copies of the signed Second Supplemental Declaration have been obtained, Applicants will submit a supplemental amendment enclosing the signed Supplemental Declaration. Accordingly, entry of these amendments is respectfully requested.

For the Examiner's convenience, a marked up copy of the amended claims is provided in Appendix A and a clean copy of all of the pending claims is provided in Appendix B.

Surrender of Original Patent

The Examiner's acknowledgement that Applicants have stated that they will surrender the patent after the Examiner determines that the pending claims are otherwise allowable is appreciated.

Rejection for Defective Oath/Declaration

Claims 1, 2, and 4-12 as amended in the response submitted February 6, 2003 are rejected as being based on a defective oath. A copy of a Supplemental Declaration under 37 C.F.R. 1.175(b)(1) asserting that errors in claiming less than they had a right to claim arose without any deceptive intention on the part of the inventors is enclosed with this amendment. Once copies of the signed Supplemental Declaration have been obtained, Applicants will submit a supplemental amendment enclosing the signed Supplemental Declaration. Applicants respectfully request that the Examiner hold

this rejection in abeyance until such time as the signed Supplemental Declarations have been received.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1-2 stand rejected and claims 4-12 are newly rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claims 1-2 and 4-12 are allegedly unclear for the recitation "stringent conditions." In accordance with the Examiner's suggestion, this recitation has been deleted from the claims. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 1, 2, and 4-12 are rejected under 35 U.S.C. § 112, first paragraph as allegedly not enabled and as allegedly lacking written description. Applicants respectfully traverse these rejections.

The present invention relates to antibodies which specifically bind to an antigenic molecule from an isolated human herpes virus, wherein the antibodies do not specifically bind to an antigenic molecule from Epstein-Barr virus, human cytomegalovirus (CMV), Herpes Simplex virus (HSV), Varicella-Zoster virus (VZV), or Herpes virus saimiri; and methods of detecting such antibodies in a biological sample. The isolated human herpes virus has the morphology of a human herpes virus and a double-stranded DNA genome of about 170 Kb. Genomic DNA from the isolated human herpes virus comprises the nucleic acid sequence of molecular clone ZVH14 (ATCC Accession No. 40,247).

Enablement

In making the enablement rejection, the Examiner alleges that the claims are not enabled for antibodies which bind to an antigenic molecule of HHV-6 wherein the genomic DNA from the HHV-6 hybridizes to the nucleic acid of molecular clone ATCC

Accession No. 40,247. As discussed with the Examiner, we understand that this rejection was based on the recitation "hybridizes to." The claims are directed to antibodies which specifically bind to antigenic molecules of the HHV-6 set forth in the claims. Therefore, in accordance with the Examiner's suggestion and for clarity, the claims have been amended to recite that the antibodies specifically bind to antigenic molecules from an isolated HHV-6 virus wherein the genomic DNA of the virus comprises the nucleic acid sequence of the molecular clone identified as ATCC Accession No. 40,247.

Applicants respectfully assert that based on the claims and specification, one of skill in the art could identify antibodies and diagnostic methods embraced by the breadth of the claims. For example, the claims require that the HHV-6 antigens to which the antibodies bind be from an HHV-6 virus with genomic DNA that comprises the nucleic acid sequence of molecular clone ZVH14 (ATCC Accession No. 40,247). Thus, there is ample guidance in the specification and claims for one of skill in the art to identify the claimed antibodies directed against the particular HHV-6 recited in the claims without undue experimentation.

In view of the foregoing remarks, Applicants respectfully assert that enablement has been satisfied for claims 1, 2, and 4-12 by the teachings in the specification and request withdrawal of this rejection.

Written Description

As discussed with the Examiner, we understand that the rejection for inadequate written description is based on the recitation "hybridizes to." The claims are directed to antibodies which specifically bind to antigenic molecules of the isolated HHV-6 set forth in the claims. Therefore, in accordance with the Examiner's suggestion and for clarity, the claims have been amended to recite that the antibodies specifically bind to antigenic molecules from an isolated HHV-6 virus wherein the genomic DNA of the virus comprises the nucleic acid sequence of the molecular clone identified as ATCC Accession No. 40,247.

Applicants respectfully assert that the claims and specification provide ample guidance regarding the binding specificity of the claimed antibodies by clearly

describing the isolated HHV-6 virus which is the source of the antigens to which the claimed antibodies specifically bind. For example, the claims require that the isolated HHV-6 virus have genomic DNA comprising the nucleic acid sequence of molecular clone ZVH14 (ATCC Accession No. 40,247). Thus, one of skill in the art would be able to identify the antibodies that specifically bind to antigens from the particular HHV-6 virus recited in the claims.

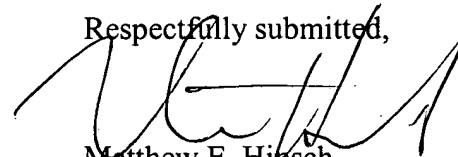
In view of the foregoing remarks, Applicants respectfully assert that written description has been satisfied for claims 1, 2, and 4-12 by the teachings in the specification and request withdrawal of this rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at 415-576-0200.

Respectfully submitted,



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